

**DUANE MORRIS LLP**

R. Terry Parker  
1540 Broadway  
New York, NY 10036-4086  
Telephone: 212.692.1000  
Facsimile: 212.692.1020

and

Keith Zakarin (*pro hac vice*)  
Michelle Hon Donovan (*pro hac vice*)  
Heather U. Guerena (*pro hac vice*)  
750 B Street, Suite 2900  
San Diego, CA 92101-4681  
Telephone: 619.744.2200

Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

BOARDING SCHOOL REVIEW, LLC,

Plaintiff,

v.

DELTA CAREER EDUCATION CORPORATION  
and WESTON EDUCATIONAL, INC., BERKS  
TECHNICAL INSTITUTE, INC., MCCANN  
EDUCATION CENTERS, INC., MILLER-MOTTE  
BUSINESS COLLEGE, INC., SOUTHWEST  
BUSINESS COLLEGES, INC., and THE MIAMI-  
JACOBS BUSINESS COLLEGE CO.,

Defendants.

---

DELTA CAREER EDUCATION CORPORATION  
et al.,

Cross-Claimants,

v.

BOARDING SCHOOL REVIEW, LLC,

Cross-Defendant.

---

CIVIL ACTION NO. 11 Civ. 8921 (DAB)

**ECF Case**

**REQUEST FOR JUDICIAL NOTICE**

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that defendants and cross-claimants Delta Career Education Corporation, Berks Technical Institute, Inc., Career Training Specialists, Inc., McCann Education Centers, Inc., Miller-Motte Business College, Inc., Southwest Business Colleges, Inc., and the Miami-Jacobs Business College Co. (collectively “Delta”), and Weston Educational, Inc. (“Heritage”) (collectively, “Cross-Claimants”), hereby request, pursuant to Federal Rules of Evidence, Rule 201 that this Court take judicial notice of certain documents described in detail below.

Under Federal Rule of Evidence 201, the court may take judicial notice of adjudicative facts if requested by a party and supplied with the necessary information. A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Fed. R. Evid. 201(b). The Court may take judicial notice of the contents of a website that is publically available within its jurisdiction, particularly where some of the contents were addressed in the pleadings and authenticity is not in dispute. *Pollstar v. Gigmania Ltd.*, 170 F. Supp. 2d 974, 978 (E.D. Cal. 2000) (taking judicial notice of printouts of website in ruling on Motion to Dismiss); *Fteja v. Facebook, Inc.*, 841 F. Supp. 2d 829, 834-835 (S.D.N.Y. 2012) (taking judicial notice of Facebook’s current website).

Here, some of the contents of the plaintiff, Boarding School Review’s (“BSR”), website is referenced and incorporated into the Complaint as part of Exhibits A and C. Additionally, the Miller-Motte College website and Heritage website are both referenced in the Counterclaims at paragraphs 24 and 33. Moreover, the authenticity of these websites, which are all publically

available is not disputed. Therefore, Cross-Claimants request the Court take judicial notice of the following URLs, printouts of which are attached hereto as indicated below.

Exhibit A: Miller-Motte College website home page available at <http://www.miller-motte.edu>

Exhibit B: Heritage website home page available at <http://www.heritage-education.com>;

Exhibit C: BSR web page for Miller-Motte College – Cary available at [http://www.communitycollegereview.com/school\\_overview/2351#Editor](http://www.communitycollegereview.com/school_overview/2351#Editor); and

Exhibit D: BSR web page for Heritage College – Oklahoma City available at [http://www.communitycollegereview.com/school\\_overview/1775](http://www.communitycollegereview.com/school_overview/1775)

Exhibit E: Google support page available at <http://support.google.com/webmasters/bin/answer.py?hl=en&answer=66359>

DATED: August 27, 2012

Respectfully submitted,

DUANE MORRIS LLP

By: /s/ Michelle Hon Donovan  
Keith Zakarin (*pro hac vice*)  
Michelle Hon Donovan (*pro hac vice*)  
750 B Street, Suite 2900  
San Diego, CA 92101-4681  
Telephone: 619.744.2200

and

R. Terry Parker  
1540 Broadway  
New York, NY 10036-4086  
Telephone: 212.692.1000  
Facsimile: 212.692.1020

*Attorneys for Defendants/Counterclaim Plaintiffs*